

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

WOLFRAM ARNOLD, ERIK
FROESE, TRACY HAWKINS,
JOSEPH KILLIAN, LAURA CHAN
PYTLARZ, and ANDREW
SCHLAIKJER,

Plaintiffs,

v.

X CORP. f/k/a TWITTER, INC., X
HOLDINGS CORP. f/k/a X
HOLDINGS I, INC. and ELON MUSK,

Defendants.

C.A. No. 1:23-cv-00528

**PLAINTIFFS' MOTION TO COMBINE RESPONSIVE BRIEFING TO
MOTIONS TO DISMISS OR, IN THE ALTERNATIVE, TO STRIKE THE
BRIEF OF DEFENDANT ELON MUSK**

Wolfram Arnold, Erik Froese, Tracy Hawkins, Joseph Killian, Laura Chan Pytlarz, and Andrew Schlaikjer (collectively, "Plaintiffs"), by and through their undersigned attorneys, move to combine into one 40-page brief Plaintiffs' responses to Defendants' motions to dismiss. D.I. 15, 18. Combining the briefs is more appropriate than having Plaintiffs respond across two separate 20-page briefs because the Defendants make overlapping substantive arguments and even incorporate by reference arguments from their respective, separate 20-page briefs.

Combining the briefs is also expected to be more convenient for the Court by reducing the number of briefs.

In their brief in support of their motion to dismiss, Defendants X Corp. and X Holdings Corp. move to dismiss Counts I, II, III, IV, V and XIV pursuant to Fed. R. Civ. 12(b)(6) and Count VI pursuant to Fed. R. Civ. P. 9(b) and 12(b)(6). D.I. 15. In his brief in support of his motion to dismiss, Defendant Elon Musk moves to dismiss the same counts on the same substantive bases, and *also* asserts arguments based on personal jurisdiction and (he claims) lack of personal liability for corporate behavior. *Compare, e.g.*, D.I. 15 at Section IV.A *with* D.I. 18 at Section IV.B. In so doing, Musk incorporated by reference 11 additional pages of arguments made by his co-defendants in their brief. *See* D.I. 18 at 10, n.3; 13, n.5; 14, n.6. In so doing, Musk has exceeded the length limitations set forth in the Court's Standing Order Regarding Briefing in all Cases, (D.I. 4), and Local Rule 7.1.3. *See Johns Hopkins Univ. v. 454 Life Scis. Corp.*, 183 F. Supp. 3d 563, 572 (D. Del. 2016) (litigant may not circumvent page limits by incorporating by reference arguments from other briefs); *Masimo Corp. v. Philips Elec. N. Am. Corp.*, 62 F.Supp.3d 368, 376 (D.Del.2014) (same).

In light of the substantive overlap and cross-references between the briefs Plaintiffs asked Defendants to consent to Plaintiffs filing a single combined brief of

40 pages rather than separate briefs, both for the convenience of the parties and the Court and in exchange for Plaintiffs waiving the issue with Musk's over-length submission. Filing a single brief would allow Plaintiffs to present the Court with all of the arguments relating to a particular count under discussion in one location – addressing both the manner in which Plaintiffs sufficiently pled each element and addressing Musk's personal jurisdiction arguments in a single brief – rather than splitting (and to some extent duplicating) that discussion across two briefs. Defendants refused.

As such, Plaintiffs respectfully request that the Court allow Plaintiffs to file a single 40-page omnibus response to D.I. 15 and D.I. 18, rather than requiring two separate 20-page briefs. In the alternative, Plaintiffs ask that the Court strike Musk's brief in support of his motion to dismiss for circumventing the Court's page limits.

Conclusion

For the reasons set forth above, the Plaintiffs respectfully request that the Court grant the motion.

Respectfully submitted,

Dated: August 8, 2023

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